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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 62

UNITED STATES OF AMERICA, APPELLANT

v.

CHARLES RESNICK AND JOSEPH RESNICK, PARTNERS, TRADING AS L. RESNICK AND SONS

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 4–7) has not yet been reported.

JURISDICTION

The order of the District Court sustaining the demurrer to the indictment was entered April 14, 1936 (R. 1, 7). The appeal to this Court was applied for and allowed on the same day (R. 7–8). The jurisdiction of this Court is invoked under the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682), and under Section 238 of the Judicial Code as amended by the

Act of February 13, 1925 (U. S. C., Title 28, Sec. 345). On June 1, 1936, this Court postponed further consideration of the question of its jurisdiction in this case to the hearing of the case on the merits.

QUESTIONS PRESENTED

1. Whether the filing of an opinion by the court below in sustaining a demurrer to the indictment was the rendition of its "decision or judgment" within the meaning of the Criminal Appeals Act, so that an appeal was required to be taken within thirty days thereafter rather than within thirty days after the entry of the order sustaining the demurrer.

2. Whether the sale of two-quart hampers for fruits and vegetables is in contravention of the Standard Container Act of 1928.

STATUTES INVOLVED

The Standard Container Act of 1928, c. 664, 45 Stat. 685 (U. S. C., Title 15, Secs. 257–257(i)), together with the pertinent provisions of the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1245 (U. S. C., Title 18, Sec. 682), are printed in Appendix A, *infra,* pp. 35–41.

STATEMENT

On September 11, 1935, the appellees were indicted in the United States District Court for the Eastern District of Pennsylvania on four counts charging violations of the Act of Congress of May 21, 1928, otherwise known as the Standard Con-

tainer Act of 1928, each count alleging an intrastate sale of certain two-quart metal hampers for fruits and vegetables which were not of any standard size authorized by the Act and which did not come within any tolerance established by the Secretary of Agriculture pursuant to the Act for hampers so standardized (R. 1–3).

The appellees demurred to the indictment (R. 3–4) on the grounds that the sale of two-quart hampers for fruits and vegetables was not a violation of the Act, and that the Act was unconstitutional because it infringed the due process clause of the Fifth Amendment, and because Congress was without power under the Constitution to fix the size of hampers for fruits and vegetables that may be manufactured for sale or shipment or sold in intrastate commerce.

The District Court on April 14, 1936, ordered that the demurrer be sustained (R. 7) on the sole ground, as disclosed by its opinion of March 11, 1936, that the Act does not forbid the sale of two-quart hampers for fruits and vegetables (R. 4–7). Concerning the other questions presented by the demurrer, the court said that (R. 5):

> The issue was so framed in this case that the constitutionality of the Act or the interstate character of the business is not involved,

and that (R. 7):

> The sustaining of the Demurrer is not based upon the intra-state character of the

> business. Under the weights and measures provisions of the Constitution, interstate business is not required. Nor is the constitutionality of the Act involved. While that question was raised in defendant's brief, it was not stressed at the argument. However, inasmuch as it was mentioned in the brief of defendant, we are dismissing the matter by saying that we do not consider that there is any merit in such an objection.

The Government on April 14, 1936, the day that the order sustaining the demurrer was entered, petitioned for an appeal (R. 8), filing with its petition an assignment of errors (R. 7–8) and a statement of jurisdiction pursuant to Rule 12 of this Court. On the same day the District Court allowed the appeal (R. 8–9). Thereafter a statement opposing jurisdiction was filed below by the appellees, in which they moved to dismiss the appeal on the ground that the appeal was not taken in time because not applied for within thirty days after the rendition of the opinion of the District Court on March 11, 1936, and in which they also, in the event that their motion to dismiss was denied, moved to affirm on the ground that the question of the construction of the statute was not substantial because the District Court had given the same construction to the statute as had this Court in *Pacific States Co.* v. *White,* 296 U. S. 176. In reply, the Government filed a brief in opposition to the motion to dismiss or affirm. On June 1, 1936, this Court postponed further consideration of the question of its jurisdiction to the hearing of the case on the merits.

SPECIFICATION OF ERRORS TO BE URGED

1. The District Court erred in holding that the provisions of the Standard Container Act of 1928 are inapplicable to the sale of two-quart size hampers for fruits and vegetables.

2. The District Court erred in sustaining the demurrer to the indictment.

SUMMARY OF ARGUMENT

I

The Criminal Appeals Act allows an appeal to be taken "within thirty days after the *decision or judgment* has been rendered." (Italics ours.) The appeal in this case was taken within thirty days after the order sustaining the demurrer to the indictment was entered, but not within thirty days after the court's opinion was rendered. The only reasonable construction which can be given to the words "decision" and "judgment", as they appear in the Criminal Appeals Act, is that they were intended to be used synonymously, that they do not refer to an opinion, that they relate to what is technically known as a judgment which has attained an appealable status through entry by the clerk in the records of the court, and that the appeal must consequently be taken from this judgment. It is only by such a construction of the words "decision or judgment" that they are brought in harmony with the well-recognized and long established scheme of appellate review in the Federal courts. As the

appeal was taken within thirty days after the judgment of the District Court sustaining the demurrer was entered, it was taken in time.

II

The court below was in error in construing the Standard Container Act of 1928 as permitting the sale of two-quart hampers for fruits and vegetables. An analysis of the statute establishes that Congress clearly intended to permit the sale only of the nine standard sizes of hampers which it prescribed. As the two-quart size hamper was not made standard, its sale was forbidden. This interpretation of the statute is supported by its legislative history, a consideration of the evils which the statute was intended to remedy, and the contemporaneous administrative construction of the officials charged with its enforcement.

ARGUMENT

I

THE APPEAL WAS TAKEN WITHIN THE TIME PRESCRIBED BY THE CRIMINAL APPEALS ACT

On June 1, 1936, this Court directed that further consideration of the question of its jurisdiction in this case be postponed to the hearing of the case on the merits. The only jurisdictional question raised by the appellees in their statement opposing jurisdiction was whether the appeal was taken within the time prescribed by the Criminal Appeals Act.

That statute, after granting the Government the right to a direct review by this Court on writ of error (now appeal)[1] of certain decisions or judgments, including a decision or judgment of the character involved herein, provides that "The writ of error [now appeal] [1] in all such cases shall be taken within thirty days after the *decision* or *judgment* has been rendered." (Italics ours.)

The record in the instant case shows that while the opinion of the District Court was handed down on March 11, 1936 (R. 1, 4–7), its order sustaining the demurrer and discharging the appellees was not filed until April 14, 1936 (R. 1, 7). The Government's appeal was petitioned for and allowed on the same day (R. 7–9).

It is obvious that the Government's appeal was in time if the court's order of April 14, 1936, sustaining the demurrer was its "decision or judgment" within the meaning of the Criminal Appeals Act.

In their statement opposing jurisdiction (pp. 2, 3) the appellees contend that the "decision" in

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[1] Writs of error were abolished by Section 1 of the Act of January 31, 1928, c. 14, 45 Stat. 54 (U. S. C., Title 28, Sec. 861a), but by the Act of April 26, 1928, c. 440, 45 Stat. 466, amending Section 2 of the former Act, it was provided that:

> The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error. (U. S. C., Title 28, Sec. 861b.)

the case was rendered on March 11, 1936, when the court handed down its opinion. The order of April 14, 1936, is characterized as one "sustaining the demurrer a second time", and it is said with respect to that order that it did not have the effect of extending the time within which the appeal must be taken. As the appellees end their argument at this point and do not discuss the question as to when a "judgment" may be considered as having been rendered within the meaning of the Criminal Appeals Act, it would seem that they limit their argument to the proposition that at least where an opinion has been filed in a case covered by the Act, the Government is required to take its appeal within thirty days after such opinion has been rendered and may not avail itself for appellate purposes of the subsequent formal judgment. This contention, we submit, is without merit.

It is our position that the only reasonable construction which can be given to the words "decision" and "judgment" as they appear in the Criminal Appeals Act is that they were intended to be used synonymously, that they do not refer to an opinion, that they relate only to what is technically known as a judgment which has attained an appealable status through entry by the clerk in the records of the court, and that the appeal must consequently be taken from this judgment. It is only by such a construction of the words "decision or

judgment" that they are brought in harmony with the well recognized and long-established scheme of appellate review in the Federal courts.

Beginning with the Act of March 3, 1891, establishing the Circuit Courts of Appeals and running through the various reenactments and modifications of that statute by the Judicial Code and the Judiciary Act of February 13, 1925, Congress has consistently provided, with certain exceptions not here material, that the appellate jurisdiction of the Circuit Courts of Appeals should extend to "final *decisions* in the District Courts. (Italics ours.) (Act of March 3, 1891, c. 517, 26 Stat. 826, 828; Judicial Code, Sec. 128; Judicial Code, Sec. 128, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936 (U. S. C., Title 28, Sec. 225).) In *Ex parte Tiffany,* 252 U. S. 32, 36, this Court specifically declared that

> the words: "final *decisions* in the district courts" mean the same thing as "final *judgments* and decrees" as used in former acts regulating appellate jurisdiction. Loveland on Appellate Jurisdiction of Federal Courts, Sec. 39. This conclusion is amply sustained by the decisions of this court. (Italics ours.)

See also *Harrington* v. *Holler,* 111 U. S. 796, 797; *McLish* v. *Roff,* 141 U. S. 661, 665.

Under this legislation the Federal courts have on several occasions been required to determine

whether opinions and other rulings prior to formal judgment may be considered as appealable judgments or decrees. In *Williamson* v. *Chicago Mill & Lumber Corporation,* 59 F. (2d) 918, 919 (C. C. A. 8th), an opinion was filed which stated the grounds of the court's determination, and concluded by saying that findings of fact, conclusions of law, and a decree might be prepared and submitted for approval. The court held that this opinion could not be treated as a decree for appeal purposes. A similar holding was made by the Circuit Court of Appeals for the Seventh Circuit in *Rardin* v. *Messick,* 78 F. (2d) 643, 644, 646. In *United States* v. *Long Branch Distilling Co.,* 262 Fed. 768 (C. C. A. 5th), it was held that an appeal did not lie from a mere verdict of a jury on which no judgment had been entered. In *Herrick* v. *Cutcheon,* 55 Fed. 6, the Circuit Court of Appeals for the First Circuit, in a per curiam decision, stated:

> Whatever may be the practice of the circuit court as to drawing out decrees before they become effective as such, it is plain that the docket entry in this case, containing only the words, "Opinion—Decree for complainants," does not constitute a decree for an injunction required to give this court jurisdiction, nor can the docket entry be aided for that purpose by reference to the opinion. The appeal was taken prematurely, and is dismissed, with costs.

See also *Rubber Co.* v. *Goodyear,* 6 Wall. 153, 155.

Perhaps the best discussion as to whether an opinion, even though it contains an order for judgment, may be considered as a judgment is found in *G. Amsinch & Co.* v. *Springfield Grocer Co.*, 7 F. (2d) 855 (C. C. A. 8th). In that case, which involved the question whether an opinion was a judgment which could not be set aside after the term, the trial court filed a "memorandum on final hearing" in which it reviewed the evidence and made certain findings of fact and conclusions of law to the effect that the plaintiff was entitled to recover a stated sum of money with interest thereon at 6% per annum from a stated date. This memorandum concluded with the words "Judgment accordingly", and was signed by the District Judge and recorded in the Law Record of the court. In a well-considered opinion the court held that the memorandum was not a judgment, saying:

> At the close of its original memorandum opinion the court said, "Judgment accordingly," and these are the words relied on by plaintiff to show a final determination of the matter. * * *
>
> A judgment is the final sentence of the law upon the matter at issue in the cause as presented by the record. It is the final determination of the rights of the parties in an action. *In re Moseley et al.*, 17 Fed. Cas. 886, No. 9,868; *Davidson* v. *Smith*, 7 Fed. Cas. 38, No. 3,608; *Black on Judgments*, § 115; *State* v. *Klein*, 140 Mo. 503, 41 S. W. 895;

4 Words and Phrases, First Series, p. 3829; *Judge* v. *Powers,* 156 Iowa 251, 136 N. W. 315, Ann. Cas. 1915B, 280; 23 Cyc. 665; *McTavish* v. *Great Northern Ry. Co.,* 8 N. D. 333, 79 N. W. 443; *Oklahoma City* v. *McMaster,* 196 U. S. 529, 25 S. Ct. 324, 49 L. Ed. 587; *Butt* v. *Herndon,* 36 Kan. 370, 13 P. 580. A final judgment leaves no further judicial act to be performed. *The opinion of the court is not a judgment.* It is merely the announcement of the reason or reasons for the conclusion the court has reached. The recording of such opinion in the book where judgments are recorded does not make it a judgment.

An order for a judgment is not a judgment. In 33 Corpus Juris, p. 1055, is a very clear statement on this subject as follows: "An order merely directing or authorizing the entry of judgment in the case does not constitute a judgment; to have this effect it must be so worded as to express the final sentence of the court on the matters contained in the record and to end the case at once, without contemplating any further judicial action." In 15 Ruling Case Law, p. 570, the distinction between judgments and findings and opinions is stated as follows: "Neither the verdict of a jury nor findings of the court constitute a judgment. *Nor do the conclusions of law stated by the judge during or after the trial of the case nor his opinion upon matters submitted, whether oral or in writing, necessarily form a part of the judgment proper.* It has been cor-

rectly said that *the decision of a court constitutes its judgment* while the opinion represents merely the reasons for that judgment." See, also, *Shepard* v. *Pettit and Another, Adm'rs., etc.,* 30 Minn. 119, 14 N. W. 511; *Bode* v. *New England Investment Co.,* 1 N. D. 121, 45 N. W. 197; *McTavish* v. *Great Northern Ry. Co.,* 8 N. D. 333, 79 N. W. 443; *United States* v. *Gomez,* 68 U. S. (1 Wall.) 690, 17 L. Ed. 677; 33 Corpus Juris, p. 1055; *Kennedy* v. *Citizens' National Bank,* 119 Iowa, 123, 93 N. W. 71; *Child* v. *Morgan et al.,* 51 Minn. 116, 52 N. W. 1127; 7 R. C. L., p. 1015.

The memorandum claimed to constitute a judgment does not purport to be the final judicial act. It does not adjudge or order that plaintiff shall recover any specified amount of money; it provides that there *shall be* a judgment according to the opinion of the court—not that there *is* a judgment by the instrument filed. No execution could have been issued thereon—no appeal taken therefrom. It was merely an order for a judgment. (Italics ours.)

See also *Puget Sound Co.* v. *King County,* 264 U. S. 22, 25.

As the decision in the *Springfield Grocer* case points out, the reason why an opinion may not be considered as the judgment or decision of a court for appellate purposes is that it is not the final judicial act of the court, but merely an announcement of the reasons for the court's judgment or

decision. See also *Williams* v. *Norris,* 12 Wheat. 117, 118; *Durant* v. *Essex Company,* 7 Wall. 107, 110; *Thompson* v. *Maxwell Land Grant Co.,* 168 U. S. 450, 456; *Albany Perforated Wrapping Paper Co.* v. *John Hoberg Co.,* 109 Fed. 589, 591 (C. C. A. 7th); *Patting* v. *Spring Valley Coal Co.,* 98 Fed. 811, 812 (C. C. A. 7th); *Fairbanks* v. *Amoskeag Nat. Bank,* 32 Fed. 572, 573 (C. C. N. H.).[2] No matter how erroneous the reasoning employed by a court in its opinion may be, its judgment, if correct, will nevertheless be affirmed. See *Indiana Farmer's Guide Pub. Co.* v. *Prairie Farmer Pub. Co.,* 293 U. S. 268, 281; *Mills Novelty Co.* v. *Monarch Tool & Mfg. Co.,* 49 F. (2d) 28 (C. C. A. 6th), certiorari denied, 284 U. S. 662. While the opinion is, of course, of aid in ascertaining the reasons for a decision or judgment, it has been often held that it does not constitute a part of the record proper in a Federal court, its inclusion in the transcript certified to the appellate court occurring simply because required by the rules of that court. See Rule 10, paragraph 2 of the Rules of this Court; *England* v. *Gebhardt,* 112 U. S. 502, 506; *Childs* v. *Williams,* 212 Fed. 151, 152 (C. C. A. 8th); *Mutual Reserve Fund Life Ass'n* v. *DuBois,* 85 Fed. 586

[2] The following state decisions also hold that opinions are not appealable judgments or decisions. *Van Gorden* v. *Schuller,* 192 Iowa 853, 858; *Wittemann Bros.* v. *Forman Bottling Co.,* 165 N. Y. Supp. 811, 812; *In Re Beam,* 93 N. J. Eq. 593, 595; *Threadgill* v. *Dixie Industrial Co.,* 202 Ala. 309; *Ollason* v. *Glasscock,* 26 Ariz. 193, 199. See also *Ogata* v. *Ogata,* 30 Hawaii 620, 622.

(C. C. A. 9th), certiorari denied, 171 U. S. 688; *North American Loan & Trust Co.* v. *Colonial & U. S. Mortg. Co.,* 83 Fed. 796, 803 (C. C. A. 8th); *Nashua & Lowell R. Corp.* v. *Boston & Lowell R. Corp.,* 61 Fed. 237, 240–241 (C. C. A. 1st); *Hoe* v. *Kahler,* 27 Fed. 145 (C. C., S. D. N. Y.); *Longsdorf,* Cyclopedia of Federal Procedure, Vol. 6, p. 211.

Not only is it clear that under comparable legislation an opinion may not be regarded as a decision or judgment for appellate purposes, but the decisions further establish that even a judgment itself does not attain an appealable status until it has been entered by the clerk in the records of the court. In the case of *In re Hurley Mercantile Co.,* 56 F. (2d) 1023, 1024–1025 (C. C. A. 5th), certiorari denied *sub nom. Atascosa County State Bank* v. *Coppard,* 286 U. S. 555, the court made a review of a number of the Federal statutes (including the Criminal Appeals Act) governing the time within which appeals must be taken. After alluding to the variation in the language of these statutes, the court said (p. 1025):

> We think Congress did not intend to establish a varying standard for beginning to count the time for appeal, but intended that the time should run only from the perfecting of the judgment or order as final by its filing with the clerk. Such was the ruling made touching appeals to the Supreme Court in *Seymour* v. *Freer,* 5 Wall. 822, 18 L. Ed. 564; *Rubber Co.* v. *Goodyear,* 6 Wall.

153, 18 L. Ed. 762; *Polleys* v. *Black River Co.*, 113 U. S. 81, 5 S. Ct. 369, 28 L. Ed. 938. In a statute relating to judgments reviewable in the Supreme Court, the term "rendered" was held to refer to such judgments as had attained appealable perfection. *Yznaga del Valle* v. *Harrison*, 93 U. S. 233, 23 L. Ed. 892. General Order in Bankruptcy XXXVI (11 USCA § 53) fixed the time for appeals in bankruptcy as "within thirty days after the judgment or decree," and this was said to mean thirty days after its entry. *Conboy* v. *First National Bank*, 203 U. S. 141, 27 S. Ct. 50, 51 L. Ed. 128. Statutes regulating appeals are remedial and should have a liberal construction in furtherance of the right of appeal. 2 R. C. L. "Appeal and Error," § 6. We hold this appeal taken within thirty days from the filing with the clerk of the judgment appealed from to be in time.

See also *Hughes*, Federal Practice, Vol. 8, pp. 448–449.

Not only is it apparent, therefore, that the Criminal Appeals Act may be brought in harmony with the other Federal legislation governing appeals only by giving such a construction to the words "decision or judgment" as will limit those words to a judgment which has been properly entered by the clerk, thereby excluding a mere opinion, but it may be pointed out that by Section 238 of the Judicial Code as amended by the Judiciary Act of February 13, 1925, Congress has

enumerated five classes of cases in which it permits a direct review by this Court of "an interlocutory or final *judgment* or decree" of a District Court (Italics ours). Among these classes of cases are cases covered by the Criminal Appeals Act (par. 2). This legislation would seem, therefore, to be an express recognition by Congress of its intention that appeals should be taken under the Criminal Appeals Act only from formal judgments.

We submit, therefore, that the Criminal Appeals Act should be construed as permitting a review by this Court only of a judgment of a District Court which has been duly and properly entered by the clerk of that court, and that, in consequence, the appeal in the present case, having been taken immediately after the entry of the order of April 14, 1936, sustaining the demurrer, was in time.

In the statement opposing jurisdiction (p. 2) reference is made to the fact that the Government's petition for appeal prayed for the allowance of an appeal from the judgment and order entered March 11, 1936 (R. 8). As heretofore stated, the opinion of the court was rendered on March 11, 1936, while its order sustaining the demurrer was not filed until April 14, 1936. It should be pointed out, however, that in its statement of jurisdiction, which was filed on the same day as its petition for appeal and which was presented to the District Court simultaneously therewith, pursuant to Rule 12 of this Court (R. 1, 8), the Government recited correctly (par. C, p. 3) that "The

judgment of the District Court sought to be reviewed was entered on April 14, 1936", and that the order of the District Court allowing the appeal expressly stated that it was based, not only on the petition for appeal, but also on the jurisdictional statement (R. 8–9). That order allowed an appeal, not from the opinion of the court, but from "the order and judgment of this court in sustaining the demurrer." The only order and judgment of the court sustaining the demurrer was that of April 14, 1936. As the Government's appeal papers were filed and presented to the District Judge after the entry of the order of April 14, 1936 (R. 1), and as it is perfectly obvious that the Government was seeking an appeal from that order and not from the opinion of March 11, 1936, we submit that the misdescription in the petition for appeal of the date of the order and judgment sustaining the demurrer was in the nature of a clerical error which may and should be disregarded. *Larkin Packing Co.* v. *Hinderliter Tool Co.*, 60 F. (2d) 491, 495 (C. C. A. 10th), and cases cited.

II

THE COURT BELOW ERRED IN CONSTRUING THE STANDARD CONTAINER ACT OF 1928 AS PERMITTING THE SALE OF TWO-QUART HAMPERS FOR FRUITS AND VEGETABLES

The indictment in this case charged the appellees with making certain sales of two-quart metal hampers for fruits and vegetables in violation of

the Standard Container Act of 1928 (Appendix A, *infra*, pp. 35–41), in that these hampers were not of any standard size authorized by the Act and did not come within any tolerance established by the Secretary of Agriculture pursuant to the Act for hampers so standardized (R. 1–3).

In sustaining the demurrer to the indictment, the opinion of the court below was based solely upon the ground that the Standard Container Act of 1928 did not apply to hampers for fruits and vegetables of a capacity of less than one-eighth of a bushel, or 4 quarts. The considerations which led the court to this conclusion were that Congress intended to fix the standards only for hampers ranging in size from one-eighth of a bushel as a minimum to two bushels as a maximum, and that it was unreasonable to suppose that Congress meant to forbid hampers of a smaller capacity than one-eighth of a bushel where such hampers contained the proper fractional part of the standard bushel as defined by the Act, as such a construction would result in an unnecessary interference with the business of those affected by the Act.[3] The practical effect of the court's decision

[3] The view of the court as to the supposed unreasonableness of the interpretation of the statute sought by the Government was apparently induced to some extent by its understanding that the Government was urging as a reason for the acceptance of its position the ground that the appellees' metal hampers "invaded a prior preempted or monopolized field occupied by the makers and users of wooden hampers" (R. 6). As the Act applies to all hampers, regardless of the

is, of course, to open the gates for the manufacture and sale of any size hamper which is below the minimum of one-eighth of a bushel or above the maximum of two bushels, provided only that it has a cubic capacity which does not deviate from a proper fractional part of the standard bushel prescribed by the Act. Such an interpretation of the statute is, we submit, unsound.

The clear language of Section 1 of the Act discloses that Congress established nine standard sizes for hampers[4] and round stave baskets for fruits and vegetables, and prescribed the cubic capacity of each of the standard sizes. The cubic capacity of each of the nine standard sizes was based on a cubic content of the standard bushel of 2,150.42 inches. Section 2 deals with splint baskets for fruits and vegetables in a similar manner. Section 3 directs the Secretary of Agriculture in his regulations under the Act to "prescribe such tol-

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material or substance of which they may be made, the materiality of any such contention is not readily apparent, and we, of course, do not advance any such argument here.

[4] A hamper is defined in the rules and regulations of the Secretary of Agriculture under the Standard Container Act of 1928 (Regulation 1, Sec. 2, Par. 5, effective June 1, 1933), as follows:

> HAMPERS.—A container, circular, elliptical, or polygonal at top and/or bottom, the top diameter of which is somewhat greater than the bottom and usually less than the depth, having slatted or solid sides ventilated or non-ventilated, and a fabricated or solid bottom which may be loose or fixed in place, or formed by a continuation of the sides.

erances as he may find necessary to allow in the *capacities* for hampers, round stave baskets, and splint baskets *set forth in sections 1 and 2 of this Act,* in order to provide for reasonable variations occurring in the course of manufacturing and handling." Section 4 provides specifically that no manufacturer shall manufacture hampers or the other containers referred to in the Act unless the dimension specifications shall have been submitted to and approved by the Secretary of Agriculture, who is directed to approve these specifications if he finds the hampers and other containers made in accordance therewith would not be deceptive in appearance and *"would comply with the provisions of sections 1 and 2 of this Act."* Section 5, the penalty section of the Act, provides that it shall be unlawful to manufacture for sale or shipment, to offer for sale, to sell, to offer for shipment, or to ship, hampers and round stave or splint baskets for fruits or vegetables, either filled or unfilled, *"that do not comply with this Act."* Section 5 contains the proviso, however, that the Standard Container Act of 1928 shall not apply to Climax baskets, berry boxes, and till baskets which comply with the provisions of the Standard Container Act of 1916 and the regulations thereunder. Section 6 provides for the condemnation, through appropriate libel proceedings in the United States District Courts, of hampers, round stave and splint baskets *"not complying with this Act."* Section 7 directs that the Act shall not "prevent the manufacture or

use of banana hampers of the shape and character now in commercial use as shipping containers for bananas." Section 9 directs the Secretary of Agriculture to prescribe such regulations as he may find necessary for carrying into effect the provisions of the Act and to make the necessary examinations and tests in order to determine whether the hampers and other containers covered by the Act meet its requirements. (Italics in paragraph ours.)

It is difficult to see how Congress could have used more specific language to indicate that it intended to permit the manufacture and sale only of the nine standard size hampers for fruits and vegetables which it prescribed and to prohibit all others. After setting up these nine standard sizes of hampers in Section 1 of the Act, Congress specifically directed that no manufacturer shall manufacture hampers unless the dimension specifications are submitted to the Secretary of Agriculture and it specifically forbade the Secretary from approving such specifications unless the hampers comply with the provisions of Section 1. In other words, the Secretary is prohibited from approving specifications for any hamper unless the hamper is of one of the standard sizes provided by Section 1 of the Act. These provisions are supplemented by the sections directing the prescribing of tolerances for the standard sizes of hampers only, penalizing the manufacture and sale of any hamper which does not comply with the Act, and authoriz-

ing the confiscation of hampers "not complying with the Act."

Moreover, it would seem significant that Congress found it necessary, in Section 7, to except from the purview of the statute the banana hamper, a container which is ordinarily ~~considerably~~ larger than the maximum two-bushel hamper permitted by the Act. If such a hamper would have been proscribed unless excepted, how can it be said that the statute permits a smaller hamper than the minimum one-eighth bushel or four quart hamper authorized by the statute.

We think it is therefore evident from the very face of the statute that it manifests a clear intent to permit the manufacture and sale, with the exception noted, only of the nine standard sizes of hampers which it prescribes, thereby eliminating two-quart hampers such as were sold by the appellees. Where a statute in its terms is so clear and free from doubt there is, as this Court has said, no room for construction. *United States* v. *Mo. Pac. R. Co.,* 278 U. S. 269.

While extrinsic aids to construction need not be resorted to in arriving at the proper interpretation of the Standard Container Act of 1928, we submit that such extrinsic aids if here utilized only serve to confirm that interpretation which we maintain is supported by the clear language of the Act. This Court has declared that, in case of ambiguity, it may turn for assistance to the legislative history of the statute (*Costanzo* v. *Tillinghast,* 287 U. S. 341, 345), may examine into the "history of

the times" and the conditions or evils which brought about the passage of the legislation [5] (*Atlantic Cleaners and Dyers* v. *United States,* 286 U. S. 427, 435; *Church of the Holy Trinity* v. *United States,* 143 U. S. 457, 465; *Daniels* v. *Tearney,* 102 U. S. 415, 419), and may consider also the contemporaneous construction of the statute by the administrative officials who are charged with enforcing it (*Norwegian Nitrogen Products Co.* v. *United States,* 288 U. S. 294).

While the particular provisions of the Standard Container Act of 1928 involved in the instant case are penal in character, this Court in *Donnelley* v. *United States,* 276 U. S. 505, 512, said that:

> The rule that penal statutes are to be strictly construed in favor of persons accused is not violated by allowing the language to have its full meaning where that construction is in harmony with the context and supports the policy and purposes of the enactment.

The Standard Container Act of 1928 is the fourth of a series of Acts passed since 1912 to

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[5] In informing itself of the conditions existing prior to the passage of the Standard Container Act of 1928, it is assumed that this Court may consider any relevant facts of which it may properly take notice. See *Muller* v. *Oregon,* 208 U. S. 412, 419; *New State Ice Company* v. *Liebmann,* 285 U. S. 262, 286–287 (dissent); *Bandini Co.* v. *Superior Court,* 284 U. S. 16; *Home Building & Loan Association* v. *Blaisdell,* 290 U. S. 398, 422, 444; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, 10–15; *Nebbia* v. *New York,* 291 U. S. 502; *Burns Baking Co.* v. *Bryan,* 264 U. S. 504, 514, 519; *Schollenberger* v. *Pennsylvania,* 171 U. S. 1, 10; *United States* v. *Butler,* 297 U. S. 1, 71.

secure the standardization of certain kinds of containers for fruits and vegetables. The first Act, approved August 3, 1912 (c. 273, 37 Stat. 250; U. S. C., Title 15, Secs. 231–233), established the standard barrel for apples. This was followed by the Act of March 4, 1915 (c. 158, 38 Stat. 1186, U. S. C., Title 15, Secs. 234–236), establishing standard barrels for fruits and vegetables, cranberries, and other dry commodities. The next in order was the Standard Container Act of 1916, c. 426, 39 Stat. 673 (U. S. C., Title 15, Sec. 251 *et seq.*). This Act, in Section 1, established three standard sizes for Climax baskets for grapes and other fruits and vegetables and prescribed the dimensions for each size. In Section 2 it provided that the "standard basket or other container for small fruits, berries, and vegetables" shall be the dry ½ pint, the dry pint, the dry quart, or a multiple of the dry quart. It made no reference to the form of the containers, nor did it prescribe the dimensions therefor. *Pacific States Co.* v. *White*, 296 U. S. 176, 183. Taken as a whole, it is evident, from a standardization standpoint, that the Act was clearly adequate as to Climax baskets, and the same was undoubtedly true as to the containers for small fruits and berries such as till baskets and berry boxes, which, because of the nature of the products, are ordinarily packed in small containers. This was recognized, it would seem, by the proviso to Section 5 of the 1928 Act excepting "Climax baskets, berry boxes, and till baskets" from any

possible reach of the statute. It is obvious, however, that as to the containers for large fruits, Section 2 of the 1916 Act made no provision, and that so far as the larger containers for vegetables were concerned the only limitation upon size was that these containers must be in multiples of the dry quart. This obviously permitted a wide variety of sizes. Although only a partial standardization of containers was possible through the Standard Barrel Act of 1915 and the Standard Container Act of 1916, there resulted the elimination of a large number of unnecessary sizes of barrels, Climax baskets, berry boxes, and till baskets. As was pointed out in Farmers Bulletin No. 1434, issued by the Department of Agriculture in September 1924, pp. 4–6:

> The two acts have done away with a large number of unnecessary sizes of barrels, Climax baskets, till baskets, and berry boxes, and have awakened a widespread demand for the application of the same principle to other containers (figs. 4 and 5). In baskets and berry boxes the reductions represent the elimination of 93, 84, and 82 per cent, respectively, of the sizes formerly used. This reduction has improved marketing conditions in the produce shipped in these containers because there is now no question as to the size of the container, and it works to the benefit of growers, shippers, and consumers. To the manufacturer it has meant a reduction in the number of forms necessary to supply his customers; he can now

make up stock ahead of orders; and it has extended his market, because the containers which he makes are now standard and in use the country over. Similar results can be accomplished by standardization of other containers.

The beneficent effect of this legislation resulted in agitation for a definite standardization of other types of containers, and efforts were made at every session of Congress from 1920 to 1928 to supplement the 1916 Act by an Act standardizing the sizes of hampers, round stave baskets, and splint baskets. See Report of the Senate Committee on Agriculture and Forestry (S. Rep. 303, 70th Cong., 1st Sess.).

Hearings were held by the Committee on Coinage, Weights, and Measures of the House of Representatives at which were present representatives of container manufacturers and fruit and vegetable growers, as well as officials of the Department of Agriculture and state officials concerned with the enforcement of weights and measures. These hearings disclosed, the Committee said in its report (H. Rep. 1129, 70th Cong., 1st Sess.), that there were then "at least 50 to 75 different weights of hampers being used, and about 40 different sizes ranging from 1 quart to 50 quarts", and that "The same condition exists with reference to round stave baskets and splint baskets, which are commonly known as the market basket." The evils which resulted from this situation and the objects and purposes

which Congress sought to accomplish by the legislation which became the Standard Container Act of 1928 are then clearly explained by the Committee in its report as follows:

> The object and purpose of this legislation is to standardize certain sizes of hampers and baskets used in the marketing of fruits and vegetables, and *to make it unlawful to either manufacture, sell, or offer for sale containers not corresponding in size with those herein mentioned.*
>
> * * * * *
>
> The main reasons and purposes for the enactment of this measure may be more fully set forth as follows:
>
> *Purposes.*—1. To improve marketing conditions by—
>
> (a) Providing a more accurate and definite basis for market quotations.
>
> (b) Eliminating the unfair competition which the grower who uses full capacity containers must meet from the user of short containers.
>
> (c) Protecting the consumer against deception.
>
> (d) *Simplifying manufacturing processes by eliminating unnecessary sizes.*
>
> *What it does.*—1. Establishes standard capacities for hampers, round stave baskets, and splint baskets.
>
> 2. Requires manufacturers to submit statement of dimension specifications to Secretary of Agriculture for approval.

3. Requires Secretary of Agriculture to approve of such specifications if a basket made according to them will *conform to one of the standard capacities set up in the bill* and is not deceptive in appearance.

4. *Forbids manufacturer, sale, or shipment of nonstandard containers.*

* * * * *

The committee believes that it is manifestly unfair to the producers, the jobbers, or retailers, as well as to the consumers, to permit the continuance of this confusion in handling food products, and it is unfair to the honest dealers to be required to compete with the unscrupulous dealers using containers having the same apparent sizes, but really containing a lesser amount than the purchaser believes that he is obtaining.

In view of the urgent request made for the passage of this measure by all of the organizations interested in the production and consumption of the commodities to be sold in the containers mentioned, the committee unanimously recommends the passage of this bill. (Italics ours.)

And in Senate Report No. 303, 70th Cong., 1st Sess., there is contained a letter from the Acting Secretary of Agriculture, under date of January 27, 1928, in which he specifically states that "the object of the bill is to eliminate unnecessary sizes of hampers, round stave baskets, and splint baskets", and that the result of the bill would be to improve marketing conditions by, among other

things, "(d) simplifying manufacturing processes by eliminating unnecessary sizes." See also House Report No. 370, 68th Cong., 1st Sess.; House Report No. 852, 66th Cong., 2d Sess.

From these reports it cannot be doubted that it was the avowed purpose of Congress in enacting the Standard Container Act of 1928 to eliminate all sizes of hampers, round stave baskets, and splint baskets other than those specified in the statute.

In *Norwegian Nitrogen Products Co.* v. *United States,* 288 U. S. 294, 315, *supra,* this Court said that: "The [administrative] practice has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new. *Fawcus Machine Co.* v. *United States, supra.*" That it was the understanding of the Department of Agriculture, the Department charged with the administration of the Act of 1928, that this legislation forbade the manufacture and sale of hampers which were not of the standard sizes prescribed is evident from the regulations issued by the Secretary of Agriculture establishing tolerances and providing for the approval of dimension specifications only for the sizes of containers made standard by the Act (*infra,* p. 64 *et seq.*). This administrative construction of the Act is also supported by various statements by officials of the Bureau of Agricultural Economics, the Bureau to whom the

enforcement of the Act was assigned by the Secretary in his regulations, in addresses made at various national conferences on weights and measures held at the Bureau of Standards and attended by weights and measures officials of the different States (*infra,* p. 41 *et seq.*). For example, at the Twenty-Second National Conference on Weights and Measures held in 1929, the Senior Marketing Specialist of the Bureau of Agricultural Economics, in addressing the conference on "The Federal Standard Container Act of 1928", said:

> As finally passed, Section 1 provided as standards for hampers and round stave baskets the ⅛, ¼, ½, ⅝, ¾, 1, 1¼, 1½, and 2 bushel sizes. Section 2 sets up for splint baskets 4, 8, 12, 16, 24, and 32 quarts as the standard sizes. This is a reduction of 67 per cent in the number of sizes of hampers and of at least 50 per cent in the number of sizes of splint baskets.

The regulations of the Secretary of Agriculture, as well as the statements of the various officials of the Department of Agriculture as to the purpose and effect of the legislation, are printed in Appendix B, *infra,* p. 41 *et seq.*[7]

[7] Contained in the Appendix, p. 51, is a photograph reproduced from the December 15, 1922, issue of the Barrel and Box, a publication devoted to the box, pail, stave, heading, and hoop interests (Volume XXVII, No. 10, p. 33). This photograph appeared in connection with an article entitled "Standardization of Wooden Shipping Containers", and illustrates very strikingly the variety in style and size of hampers which were in use prior to the enactment of the Standard Container Act of 1928. Another photograph ap-

In a motion to affirm contained in their statement opposing jurisdiction, the appellees rely upon a sentence in the opinion of this Court in *Pacific States Co.* v. *White,* 296 U. S. 176, *supra,* as supporting their construction that the Standard Container Act of 1928 is inapplicable to the manufacture and sale of two-quart hampers for fruits and vegetables. In that case this Court said (pp. 182–183):

> The standard prescribed by the order does not conflict with any established by Congress. The Standard Baskets and Containers Act of May 21, 1928, c. 664, 45 Stat. 685, has no relation to the matter here under consideration. That statute deals solely with hampers, round stave, and splint baskets of capacity not less than one-eighth bushel.

While the last sentence of this quotation, taken literally, seems to support the contention of the appellees, we do not think it can fairly be said, when this case is analyzed, that this Court had in mind the question which is here presented.

The question involved in the *Pacific States Co.* case was the validity of an order of a State Department of Agriculture fixing as the standard containers for raspberries and strawberries pint hallocks of certain dimensions. The plaintiff who assailed the order was a manufacturer of a form of

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pearing in the Appendix, p. 52, shows the standard sizes of hampers permitted by the Standard Container Act of 1928, the two-bushel size, however, being omitted.

container which was known as a tin top or metal rim container. It was concededly not a hallock, and there is nothing in the opinion from which the conclusion can be drawn that this Court considered it to be a hamper. The plaintiff contended, among other things, that the standard container prescribed by the State order was in conflict with those established by the Standard Container Act of 1928 and the Standard Container Act of 1916. As the Standard Container Act of 1928 deals only with hampers, round stave and splint baskets for fruits and vegetables, and specifically excepts from its operation "berry boxes" which comply with the Standard Container Act of 1916, it is evident that the Act of 1928 had no application to containers either of the type manufactured and sold by the plaintiff or the type referred to in the order of the State Department of Agriculture. This Court itself in the sentence upon which the appellees rely pointed out this distinction when it said that the Standard Container Act of 1928 "deals solely with hampers, round stave, and splint baskets", and, consequently, had no relation to the matter before it. In going further and stating that the statute dealt solely with hampers, round stave, and splint baskets "of capacity not less than one-eighth bushel", the Court was obviously not required, in view of the contention before it or the types of containers involved, to give consideration to the question here presented as to whether the Standard Container Act of 1928 prohibits the manufacture

and sale of *hampers* of a capacity less than one-eighth of a bushel.

Very little discussion was directed in the opinion to the Standard Container Act of 1928, as the opinion discloses (p. 183) that the controversy with reference to the alleged conflict between the State order and the legislation of Congress hinged principally upon the applicability of Section 2 of the earlier Container Act of 1916 (U. S. C., Title 15, Sec. 252 *et seq.*), which dealt with the cubic capacity of *any type* of container for small fruits, berries, and vegetables *regardless of form* or dimensions. It was because of the fact that this section prescribed neither the form nor the dimensions of the containers to which it related that this Court held that the Standard Container Act of 1916 left to the individual States the adoption of the standards in these respects if deemed necessary, and, consequently, was not in conflict with the State order.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below sustaining the demurrer to the indictment should be reversed.

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OCTOBER 1936.

APPENDIX A

STATUTES INVOLVED

The Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682), insofar as pertinent, provides:

> That a writ of error (now appeal) may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the United States in all criminal cases, in the following instances, to wit:
>
> From a decision or judgment quashing, setting aside, or sustaining a demurrer to, any indictment, or any count thereof, where such decision or judgment is based upon the invalidity, or construction of the statute upon which the indictment is founded.
>
> * * * * *
>
> The writ of error (now appeal) in all such cases shall be taken within thirty days after the decision or judgment has been rendered and shall be diligently prosecuted and shall have precedence over all other cases.
>
> * * * * *

The Standard Container Act of May 21, 1928, c. 664, 45 Stat. 685 (U. S. C., Title 15, Secs. 257–257i), provides:

> SEC. 1. That the standard hampers and round stave baskets for fruits and vegetables shall be of the following capacities: One-eighth bushel, one-fourth bushel, one-half bushel, five-eighths bushel, three-fourths bushel, one bushel, one-and-one-fourth bushels, one-and-one-half bushels, and two

bushels, which, respectively, shall be of the cubic content set forth in this section. For the purposes of this Act a bushel, standard dry measure, has a capacity of two thousand one hundred and fifty and forty-two one-hundredths cubic inches.

(a) The standard one-eighth bushel hamper or round stave basket shall contain two hundred and sixty-eight and eight-tenths cubic inches.

(b) The standard one-fourth bushel hamper or round stave basket shall contain five hundred and thirty-seven and six-tenths cubic inches.

(c) The standard one-half bushel hamper or round stave basket shall contain one thousand and seventy-five and twenty-one one-hundredths cubic inches.

(cc) The standard five-eighths-bushel hamper or round stave basket shall contain one thousand three hundred and forty-four cubic inches.

(d) The standard three-fourths-bushel hamper or round stave basket shall contain one thousand six hundred and twelve and eight-tenths cubic inches.

(e) The standard one-bushel hamper or round stave basket shall contain two thousand one hundred and fifty and forty-two one-hundredths cubic inches.

(f) The standard one-and-one-fourth-bushel hamper or round stave basket shall contain two thousand six hundred and eighty-eight cubic inches.

(g) The standard one-and-one-half-bushel hamper or round stave basket shall contain three thousand two hundred and twenty-five and sixty-three one-hundredths cubic inches.

(h) The standard two bushel hamper or round stave basket shall contain four thou-

sand three hundred and eighty-four one-hundredths cubic inches.

SEC. 2. That the standard splint baskets for fruits and vegetables shall be the four-quart basket, eight-quart basket, twelve-quart basket, sixteen-quart basket, twenty-four-quart basket, and thirty-two-quart basket, standard dry measure. For the purposes of this Act a quart standard dry measure has a capacity of sixty-seven and two-tenths cubic inches.

(a) The four-quart splint basket shall contain two hundred and sixty-eight and eight-tenths cubic inches.

(b) The eight-quart splint basket shall contain five hundred and thirty-seven and six-tenths cubic inches.

(c) The twelve-quart splint basket shall contain eight hundred and six and four-tenths cubic inches.

(d) The sixteen-quart splint basket shall contain one thousand and seventy-five and twenty-one one-hundredths cubic inches.

(e) The twenty-four quart splint basket shall contain one thousand six hundred and twelve and eight-tenths cubic inches.

(f) The thirty-two quart splint basket shall contain two thousand one hundred and fifty and forty-two one-hundredths cubic inches.

SEC. 3. That the Secretary of Agriculture shall in his regulations under this Act prescribe such tolerances as he may find necessary to allow in the capacities for hampers, round stave baskets, and splint baskets set forth in sections 1 and 2 of this Act in order to provide for reasonable variations occurring in the course of manufacturing and handling. If a cover be used upon any hamper or basket mentioned in this Act, it shall be securely fastened or attached in such a

manner, subject to the regulations of the Secretary of Agriculture, as not to reduce the capacity of such hamper or basket below that prescribed therefor.

SEC. 4. That no manufacturer shall manufacture hampers, round stave baskets, or splint baskets for fruits and vegetables unless the dimension specifications for such hampers, round stave baskets, or splint baskets shall have been submitted to and approved by the Secretary of Agriculture, who is hereby directed to approve such specifications if he finds that hampers, round stave baskets, or splint baskets for fruits and vegetables made in accordance therewith would not be deceptive in appearance and would comply with the provisions of sections 1 and 2 of this Act.

SEC. 5. That it shall be unlawful to manufacture for sale or shipment, to offer for sale, to sell, to offer for shipment, or to ship, hampers, round stave baskets, or splint baskets for fruits or vegetables, either filled or unfilled, or parts of such hampers, round stave baskets, or splint baskets that do not comply with this Act: *Provided,* That this Act shall not apply to Climax baskets, berry boxes, and till baskets which comply with the provisions of the Act approved August 31, 1916, entitled "An Act to fix standards for Climax baskets for grapes and other fruits and vegetables, and to fix standards for baskets and other containers for small fruits, berries, and vegetables, and for other purposes" (Thirty-ninth United States Statutes at Large, page 673), and the regulations thereunder. Any individual, partnership, association, or corporation that violates this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding

$500: *Provided further,* That no person shall be prosecuted under the provisions of this Act when he can establish a guaranty signed by the manufacturer, wholesaler, shipper, or other party residing within the United States from whom the hampers, round stave baskets, or splint baskets, as defined in this Act, were purchased, to the effect that said hampers, round stave baskets, or splint baskets are correct, within the meaning of this Act. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of the hampers, round stave baskets, or splint baskets to such person, and in such case such party or parties making such sale shall be amenable to the prosecution, fines, and other penalties which would attach in due course under the provisions of this Act to the person who made the purchase.

SEC. 6. That any hamper, round stave basket, or splint basket for fruits or vegetables, whether filled or unfilled, or parts of such hampers, round stave baskets, or splint baskets not complying with this Act, which shall be manufactured for sale or shipment, offered for sale, sold, or shipped, may be proceeded against in any district court of the United States within the district where the same shall be found and may be seized for confiscation by a process of libel for condemnation. Upon request the person entitled shall be permitted to retain or take possession of the contents of such hampers or baskets, but in the absence of such request, or when the perishable nature of such contents makes such action immediately necessary, the same shall be disposed of by destruction or sale, as the court or a judge thereof may direct. If such hampers, round stave baskets, splint baskets, or

parts thereof be found in such proceeding to be contrary to this Act, the same shall be disposed of by destruction, except that the court may by order direct that such hampers, baskets, or parts thereof be returned to the owner thereof or sold upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such hampers, baskets, or parts thereof shall not be sold or used contrary to law. The proceeds of any sale under this section, less legal costs and charges, shall be paid over to the person entitled thereto. The proceedings in such seizure cases shall conform as near as may be to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in such case, and all such proceedings shall be at the suit and in the name of the United States.

SEC. 7. That this Act shall not prohibit the manufacture for sale or shipment, offer for sale, sale, or shipment of hampers, round stave baskets, splint baskets, or parts thereof, to any foreign country in accordance with the specifications of a foreign consignee or customer not contrary to the law of such foreign country; nor shall this Act prevent the manufacture or use of banana hampers of the shape and character now in commercial use as shipping containers for bananas.

SEC. 8. That it shall be the duty of each United States district attorney to whom satisfactory evidence of any violation of this Act is presented to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States in his district for the enforcement of the provisions of this Act.

SEC. 9. That the Secretary of Agriculture shall prescribe such regulations as he may find necessary for carrying into effect the provisions of this Act, and shall cause such examinations and tests to be made as may be necessary in order to determine whether hampers, round stave baskets, and splint baskets, or parts thereof, subject to this Act, meet its requirements, and may take samples of such hampers, baskets, or parts thereof, the cost of which samples, upon request, shall be paid to the person entitled.

SEC. 10. That for carrying out the purposes of this Act the Secretary of Agriculture is authorized to cooperate with State, county, and municipal authorities, manufacturers, dealers, and shippers, to employ such persons and means, and to pay such expenses, including rent, printing publications, and the purchase of supplies and equipment in the District of Columbia and elsewhere, as he shall find to be necessary, and there are hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for such purposes.

SEC. 11. That sections 5 and 6 of this Act shall become effective at but not before the expiration of one year following the 1st day of November, next, succeeding the passage of this Act.

APPENDIX B

[Extracts from various documents showing conditions which called for standardization of sizes of hampers, together with views of those charged with the enforcement of the Standard Container Act of 1928 as to its purposes and effect]

In Farmers' Bulletin No. 1434, entitled "Standard Baskets for Fruits and Vegetables", issued by

the Department of Agriculture in September 1924 the following foreword appears on the inside front cover.

> Standardization of containers for marketing fruits and vegetables is an important problem that demands the attention of the general public. It is vitally necessary in the interest of a square deal that the exact content of these packages be generally known and that the different sizes be readily distinguishable from each other.
>
> Federal standards are now in force regarding the sizes of barrels used for fruits and vegetables and for cranberries, and Federal standards are fixed for grape baskets, berry boxes, and small till baskets.
>
> A serious lack of uniformity is still to be corrected in the sizes of such packages as hampers, round stave baskets, splint or market baskets, and of many boxes and crates used in the marketing of perishables.

On page 3 of this bulletin are two photographs illustrating very vividly the difference in quantity held by several hampers which appear to be identical in size but which are not actually of the same size.

On page 4 of this pamphlet it was said with respect to the importance of standardizing containers:

> Standard containers for marketing fruits and vegetables are of more interest to the average citizen than he generally realizes. He is at all times a consumer of some commodity and may be a grower or shipper of other commodities, a manufacturer of containers, or an official of a railroad, steamship line, or other carrier. As a consumer he is frequently defrauded by the substitution of short-measure packages at the full-

measure price. Also the cost of marketing is increased by the greater expense of manufacturing a large number of styles and sizes and by breakage in transit, which may be due to weak packages, to improper stowage, or to the difficulty of loading odd-sized containers.

Standardization means to the manufacturer that production is simplified and that he can concentrate on a few sizes, with consequent lowering of costs. To the carrier it means the elimination of many sizes which now help to complicate the problem of damage in transit, and narrows the container problem to a few sizes for which standard strength specifications can be worked out and approved methods of stowing and bracing devised. The grower or shipper benefits by any action that lowers the cost of manufacture and tends to reduce breakage in transit. In addition standard containers provide him with a definite basis of sale so far as the size of his package is concerned. He is thus relieved of unfair competition through use by his competitor of a "short" package.

On pages 4 to 6 it was said with reference to the Standard Barrel Act of 1915 and the Standard Container Act of 1916:

The United States standard barrel act, passed in 1915, is enforced by the Bureau of Standards, United States Department of Commerce, and in those States which have legally adopted the Federal standard by the local sealers of weights and measures. The United States standard container Act of 1916, fixing standards for Climax baskets and for berry boxes and small till baskets, is enforced by the Bureau of Agricultural

Economics of the United States Department of Agriculture.

The two acts have done away with a large number of unnecessary sizes of barrels, Climax baskets, till baskets, and berry boxes and have awakened a widespread demand for the application of the same principle to other containers (figs. 4 and 5). In baskets and berry boxes the reductions represent the elimination of 93, 84, and 82 per cent, respectively, of the sizes formerly used. This reduction has improved marketing conditions in the produce shipped in these containers because there is now no question as to the size of the container, and it works to the benefit of growers, shippers, and consumers. To the manufacturer it has meant a reduction in the number of forms necessary to supply his customers; he can now make up stock ahead of orders; and it has extended his market, because the containers which he makes are now standard and in use the country over. Similar results can be accomplished by standardization of other containers.

On pages 11 and 12 it was said with reference to hampers:

The hamper is one of the most widely used shipping containers, and is especially popular in the Eastern and Southern States. Almost 30,000,000 of these baskets are used annually. When made of light materials the hamper is well adapted for marketing light produce, such as lettuce and kale; and when of heavier construction, it can be used in shipping such products as sweet potatoes and apples.

A glance at Figure 8 shows a large number of styles and sizes of hampers in use at present. [The photograph referred to is

reproduced on page 51 of this Appendix.] On account of the different shapes and sizes it is practically impossible for a purchaser to know just how much he is getting, when he buys a hamper of produce.

The need for standard dimensions is not generally recognized. On first consideration it would seem that if all standard bushel hampers contained the same cubic content there would be no chance for deception. This is not altogether true, as will be seen by referring to Figure 10. The baskets shown in this group are all standard bushels, but one would never know it by looking at them. Another important reason for fixing standard dimensions is to facilitate the development of standard rules for loading these containers in cars.

It is estimated that one-third of the so-called half-bushel hampers which are manufactured to-day are short measure. In fact, the use of the 14-quart basket has become universal in certain districts, entirely supplanting the 16-quart or half-bushel basket.

The seven-eighth or 28-quart hamper, which is frequently so made as to hold as little as 27 quarts, is another size which should be eliminated. (See fig. 2.) It is used largely for shipping southern produce and masquerades as a full bushel in the markets. This basket has already been declared illegal in Texas, New Jersey, Indiana, Ohio, and the District of Columbia. About 25 per cent of what are commonly supposed to be bushel baskets are short measure.

Still another size in common use which should be eliminated is the 5-peck hamper. This size does not meet any need which is not filled by the 1 bushel and 1½ bushel sizes.

The 20-quart or five-eighths bushel brace basket is used chiefly in the territory tributary to Philadelphia, where it is employed extensively in hauling tomatoes to the canneries. This size is not to be regarded as a short container, because it is more likely to be confused with the 16-quart or half-bushel basket than with a larger size; but it does not appear in the list of proposed standards recommended by the Bureau of Agricultural Economics. However, it should be noted that there is used to some extent in Philadelphia a 16-quart brace basket, which so closely resembles the 20-quart hamper in construction and size as to be readily mistaken for it.

The ordinary hamper is circular in form, but an oval shape (fig. 11) has been put on the market recently by one manufacturer. Instead of a number of staves of equal size, this type has a wide panel on each side with three smaller staves at each end. The wide panels permit the placing of a label on the package. This hamper has been used for shipping apples, cucumbers, and sweet potatoes.

In some eastern sections a bushel hamper with a loose bottom is used for apples. The cover is placed in position, the hamper turned bottom up, and the fruit ring-packed through the bottom end. The bottom is then forced into place and nailed in.

The sizes of hampers recommended by the Bureau of Agricultural Economics as being sufficient in number to satisfy all legitimate requirements of the trade are as follows: Eight-quart, or one-quarter bushel; 16-quart, or one-half bushel; 24-quart, or three-quarter bushel; 32-quart, or one

bushel; 48-quart, or one and one-half bushel (fig. 8). All of these sizes are necessary.

The 24-quart size is recommended, because there is a demand for a container between the half-bushel and bushel sizes. This demand is now met in one section of the country by the 20-quart size and in other sections by the 28-quart size. Neither of these sizes has any place in a logical system of standard containers, whereas the use of the 24-quart size gives a series of standards of 1, 2, 3, 4, and 6 peck capacity. (Italics ours.)

On page 15 it was said:

> The carriers of the United States say that in the handling of perishables the losses in one year amounted to $10,000,000. Among the many causes of these losses are rough handling, failure to stow shipments properly in cars, delay in transit, lack of proper refrigeration, and frail containers. Such a tax on the fruit and vegetable business of the country calls for cooperation on the part of growers, shippers, container manufacturers, and carriers in an effort to reduce the damage to the lowest possible point.

In an address by F. P. Downing, of the Bureau of Markets of the Department of Agriculture, on "The Present Movement Toward Obtaining Standard Shipping Containers for Marketing Fresh Fruits and Vegetables", delivered at the Twelfth Annual Conference on Weights and Measures held at the Bureau of Standards May 21–24, 1919 (Miscellaneous Publications, Department of Commerce, No. 41, p. 89 *et seq.*), it was said (p. 92):

> I believe it is best to take this thing up from the standpoint of individual con-

tainers. We have already standardized the grape basket; we have already standardized the berry basket and the till basket; and now, gradually, we can standardize the other baskets. We have worked out with our legal advisers a bill standardizing the round-stave basket and the hamper. There are more than 30 sizes of these baskets, almost as many baskets as there are quarts in a bushel. Now, we can get away from that by selecting only those sizes that are necessary for carrying out legitimate trade. *We believe, from a thorough study of this question, that five sizes are a sufficient number, the 8, 16, and 20 quart, the bushel, and the bushel and a half.* (Italics ours.)

On pages 92–93 it was said:

I do not know whether you gentlemen realize how important this is, but the railroads report that their claims for loss and damage in transit in the last year amounted to something like $100,000,000 on all commodities shipped; that first in point of loss in transit was grain, and a close second to grain was perishables. The latter loss was largely from breakage due to failure to load packages in the cars solidly, on account of the many different dimensions; and due also to lack of strength. All the grower seemed to be interested in was something to put on the platform. Later on he held the railroad responsible by putting in a claim for damage. As a result the United States Railroad Administration to-day has appointed a committee, known as the "Blood committee," for the standardization of packages. The railroads are very much interested in this movement toward standard packages and

have subcommittees all over this country. Their idea is to put these standard specifications into the railroad tariffs and to put a higher tariff on nonstandard packages; or to refuse to allow claims on such packages. Now, there may be some question as to whether it is advisable for the railroads to do this. Some of our shippers are saying that in doing so they are trying to exercise a function of Congress; that they are trying to establish standards. But whether it is constitutional or not, the railroads have already begun to get results. Only a few weeks ago I saw the first standard bushel hamper of cucumbers come from the State of Florida; the railroads are going to refuse to carry cucumbers in anything but that standard package.

In this proposed bill, in addition to the standards of the hamper, we are also proposing standards for the round-stave basket. Here, again, we have a similar condition. The hamper is used very largely in the South and East. The round-stave basket is more distinctly a package of the Northwest and Central States, even out as far as Texas.

* * *

In the December 1922 issue of The Barrel and Box, a publication devoted to the box, cooperage, pail, stave, heading, and hoop interests (Vol. XXVII, No. 10, p. 33), there appears in connection with an article entitled "Standardization of Wooden Shipping Containers" a photograph which is reproduced on page 51, with the legend given below the same.

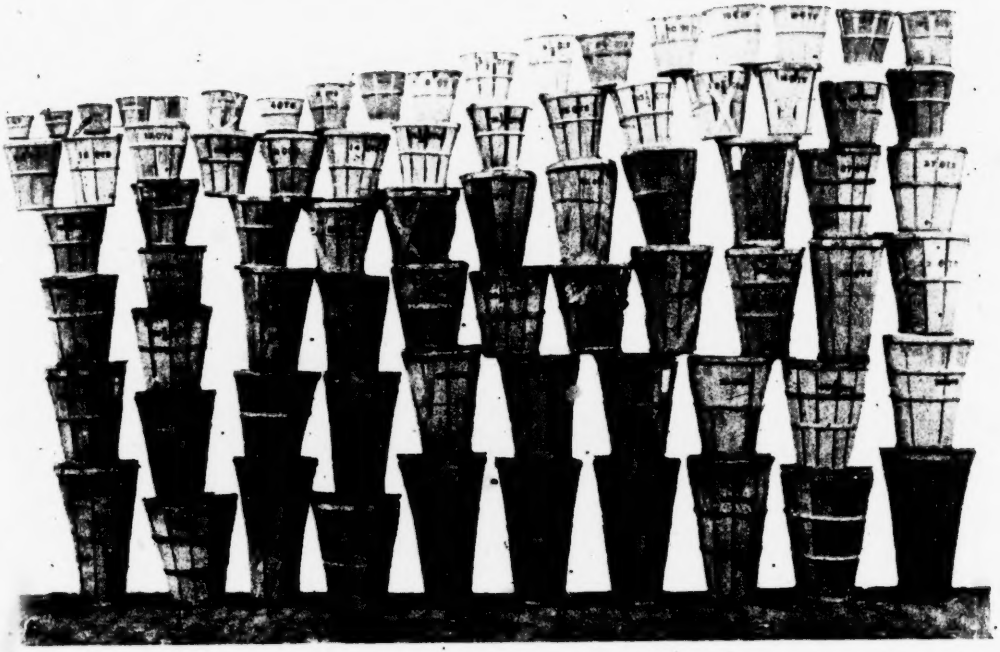
At the Nineteenth National Conference on Weights and Measures held at the Bureau of Standards May 25–28, 1926, the following resolution was adopted by the Conference (p. 168):

RESOLUTION ON STANDARD HAMPERS AND BASKETS

> Whereas Congress has before it certain bills to standardize hampers, round-stave baskets, and splint baskets for interstate shipment of vegetables and fruit: Therefore be it
>
> *Resolved,* That we, the delegates of the Nineteenth National Conference on Weights and Measures, meeting at Washington, D. C., May 25 to 28, 1926, do hereby indorse the principle of such legislation as one making for economy, standardization, and the prevention of fraud in the sale of commodities so handled.

In a report of the Chief of the Bureau of Agricultural Economics to the Secretary of Agriculture under date of September 11, 1929, it was said (p. 23):

> The passage of the standard hamper and basket act of 1928 greatly increased the standard-container work. In addition to the grape baskets and berry boxes which were included under the act of 1916, hampers, round-stave baskets, and splint baskets are now under the jurisdiction of the department.
>
> These acts are administered as a service project; only one prosecution has ever been found to be necessary. A large volume of work is necessary in making tests and meas-



GROUP OF HAMPERS SHOWING SIZES AND STYLES IN USE. A STRIKING ILLUSTRATION OF NEED OF STANDARDIZATION.

U. S. DEPARTMENT OF AGRICULTURE

BUREAU OF AGRICULTURAL ECONOMICS

SIZES OF HAMPERS PERMITTED BY THE STANDARD CONTAINER ACT OF 1928, THE TWO BUSHEL SIZE, HOWEVER, BEING OMITTED.

> urements of the samples of containers submitted in order to pass upon their legality. A much larger percentage of the samples of the large containers covered by the act of 1928 have been found to be nonstandard than has been the case with the smaller containers covered by the act of 1916. More conferences with manufacturers have been necessary, and more educational work has been done. Very satisfactory progress has been made, however, and excellent cooperation has been given the bureau.

In an address by H. A. Spilman, Senior Marketing Specialist, Bureau of Agricultural Economics, Department of Agriculture, on "The Federal Standard Container Act of 1928", delivered at the Twenty-Second National Conference on Weights and Measures held at the Bureau of Standards June 4–7, 1929 (Miscellaneous Publications, Bureau of Standards, No. 101, p. 13, *et seq.*), the paper being read by L. C. Carey, Marketing Specialist, Department of Agriculture, it was said (pp. 13–15):

> We have two Federal laws affecting the baskets used for fruits and vegetables. These are commonly known as the United States standard container act and the United States standard container act of 1928. The one known as the United States standard container act has been on the statute books since 1916 and became effective November 1, 1917. The name by which that act has been known is somewhat of a misnomer, since it is by no means as general in its scope as the name would signify. The main purpose of that law was to standard-

ize the Climax baskets used for grapes and the small baskets or boxes used for berries. In fact, the law as passed was a combination of a bill for standardization of Climax baskets and one for the standardization of berry boxes. As put together, its wording was such as to standardize also what we call till baskets and to indirectly affect larger containers, such as hampers, round stave baskets, and splint baskets. This effect was secured by reason of the law's requirement that containers of fruits and vegetables be made in multiples of the dry quart.

* * * * *

This original standard container act reduced the number of Climax baskets from 31 to 3, the number of till baskets from 30 to 5, and the number of sizes of berry boxes from 17 to 3. These reductions represent the elimination of 93, 84, and 82 per cent, respectively, of the sizes formerly used.

* * * * *

The results of this original standard container act proved so satisfactory to manufacturers that they requested the Department of Agriculture to undertake investigations looking toward the standardization of hampers, round stave baskets, and splint baskets.

These investigations demonstrated that there was as much need of standardization of these three types as there ever had been of the three types already standardized. Hampers were found to be made in the following sizes: 2, 4, 6, 8, 10, 12, 13, 13½, 14, 15, 16, 18, 20, 24, 27, 28, 30, 32, 40, 44, and 48 quart. Added to this great number of sizes was a great variation in dimensions, so

that there were something like 75 capacities and dimensions for hampers. In the case of round stave baskets the condition was not so bad, as 25 or 30 would cover the number of different sizes made. So far as splint baskets are concerned, nobody has ever attempted to estimate the number of sizes and differences in dimensions which have existed during the past years.

As a result of the investigations made by the Department of Agriculture there was drawn up in the fall of 1919 a tentative form of the bill for the standardization of hampers, round stave baskets, and splint baskets. *This was done for the purpose of discussion with manufacturers, and it was found that they wished rather rigid and definite restrictions set up. They wished the number of sizes cut down to a very small number; they wanted dimension specifications for each size and type made a matter of law; and also wished the law to define certain elements affecting the strength of containers, such as the number and thickness of staves and thickness of hoops.* This bill was probably rewritten a good many times before it met the approval not only of the manufacturers of baskets but of large organizations such as the American Farm Bureau Federation, the National League of Commission Merchants, the International Apple Shippers' Association, and the Western Fruit Jobbers Association. In the end a bill along the lines indicated above was introduced in the House of Representatives in the early part of 1920 by Representative Vestal, of Indiana, at the request of the National League of Commission Merchants.

This original bill prescribed as sizes for hampers the ¼, ½, 1, and 1½ bushel. The sizes were the same for the round stave baskets except that the 2-bushel size was added to take care of certain farm baskets. For splint baskets the sizes specified were the 4, 8, 12, 16, and 24 quart.

At hearings which were held on the bill considerable sentiment developed from New Jersey, Delaware, and Maryland in favor of the retention of the 20-quart size of hamper. As a result of the representations made with some force before the committee this size was inserted as one of the standards both for the hamper and the round stave basket. In this shape the bill went before the House and was discussed in Committee of the Whole on two different days. One of the first things which the House did was to knock out all of the specifications affecting the strength of baskets. With the amendments made, the bill passed the House in Committee of the Whole, but was never reported into the House itself. This was the first skirmish on a piece of legislation which remained before Congress for eight years before finally achieving passage. During the eight years its form was modified to a considerable extent. Dimension specifications were dropped as well as strength specifications, and additions were made to the number of standards. *As finally passed, section 1 provides as standards for hampers and round stave baskets the ⅛, ¼, ½, ⅝, ¾, 1, 1¼, 1½, and 2 bushel sizes. Section 2 sets up for splint baskets 4, 8, 12, 16, 24, and 32 quarts as the standard sizes. This is a reduction of 67 per cent in the number of*

sizes of hampers and of at least 50 per cent in the number of sizes of splint baskets. During the years the law was under discussion the makers of round stave baskets voluntarily cleaned house and its final passage makes but little difference to them. (Italics ours.)

In a discussion of this paper the following appears (pp. 18–19):

> Mr. ROGERS. We would like to know whether or not the manufacturers can manufacture containers of other sizes for use in the State of New Jersey?
>
> Mr. CAREY. If the container is a hamper, a round stave basket, or a splint basket, it would be illegal to do so.
>
> * * * * *
>
> Mr. CAREY. * * * The standard container act of 1928 fixes the sizes of hampers, round stave baskets, and splint baskets. Sizes other than those standards are illegal and can not be made, sold, or shipped, or offered for sale or shipment, filled or unfilled.

In Farmers' Bulletin No. 1579, entitled "Containers Used in Shipping Fruits and Vegetables", issued April 1929, revised 1934, published by the Department of Agriculture, the following was said with reference to hampers when used in connection with the shipment of green beans (pp. 6–7):

> Practically all green beans are shipped in hampers, although round stave and tub baskets are used to some extent (fig. 7). There is considerable difference of opinion in various sections as to the best size of

hamper to use for this commodity. Florida and Mississippi and some other parts of the South formerly used the 28-quart hamper, believing any larger size to be too large. Under the Standard Container Act of 1928 the use of this size became illegal after November 1, 1929. Since that date growers have used either the 24-quart or the 32-quart size. The North Carolina and Virginia sections use the 40-quart hamper. New Jersey uses the bushel size. Hampers are also coming into use on the Pacific coast as bean containers.

On page 34 of this report it was said:

> Meanwhile the need for standardizing those types of containers not now regulated in any way on a national scale grows more apparent. The benefits accruing from the Federal standardization of berry baskets, till baskets, Climax baskets, hampers, round- and flat-bottom stave baskets, and splint or market baskets, and barrels, are universally recognized. There seems to be a growing demand that the same principle of standardization be applied to cartons, crates, and boxes for fruits and vegetables. A bill to accomplish this and to consolidate and equalize container legislation has been introduced in Congress.

At the Twenty-fourth National Conference on Weights and Measures held at the Bureau of Standards June 2–5, 1931 (Miscellaneous Publications, No. 129, p. 44 *et seq.*), an address was delivered by H. A. Spilman, Senior Marketing Specialist, Bureau of Agricultural Economics, United States Department of Agriculture, on "Proposed

Consolidation and Amendment of Federal Standard-Container Legislation." In this address there appears (p. 45) the following tabulation, which is particularly interesting because it discloses that the Secretary of Agriculture has approved specifications only for hampers conforming to the standard sizes prescribed by the Act of 1928:

Standard containers—standard container act of 1928

Established standards	Number of shapes or specifications	Variants and types
Hampers:		
⅛-bushel	One	1. Regular flush top. 2. Raised bottom. 3. High hat.
¼-bushel	do	Same as above plus 4. Cross-brace stave. 5. Square hamper.
½-bushel	do	1. Regular flush top. 2. Raised bottom. 3. Cross-brace staves (8 and 8¼ inch bottoms).
⅝-bushel	do	1. Regular. 2. Cross-brace staves.
¾-bushel	Two	1. Based on old ⅞ bushel. 2. Based on old 1 bushel.
1-bushel	Four	1. Regular-set-down hoop. 2. Flush top. 3. 10-inch bottom—storage. 4. Lobart export—13-inch bottom. 5. Oval.
1¼-bushel	One	
1½-bushel	Two	1. 9-inch bottom regular and flush top. 2. 10-inch bottom.

RULES AND REGULATIONS OF THE SECRETARY OF AGRICULTURE UNDER THE UNITED STATES STANDARD CONTAINER ACT OF 1928, PROMULGATED OCTOBER 10, 1928, WITH AMENDMENTS THERETO EFFECTIVE JUNE 1, 1933, AND JANUARY 1, 1936

REGULATION 1—DEFINITIONS

SECTION 1. Words used in these regulations in the singular form shall be deemed to import the plural, or vice versa, as the case may demand.

SEC. 2. For the purpose of these regulations, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

Paragraph 1. Standard container act of 1928, or the act.—The act entitled "An act to fix standards for hampers, round stave baskets, and splint baskets, for fruits and vegetables, and for other purposes", approved May 21, 1928. (Pub., No. 462, 70th Cong.)

Par. 2. Secretary.—The Secretary of Agriculture of the United States.

Par. 3. Chief of Bureau.—The Chief of the Bureau of Agricultural Economics of the United States Department of Agriculture.

Par. 4. Containers.—Hampers, round stave baskets, or the variants of these types known as straight side or tub baskets, and splint or market baskets for fruits and vegetables.

Par. 4. (5) *Hamper.*—A container, circular, elliptical, or polygonal at top and/or bottom, the top diameter of which is somewhat greater than the bottom and usually less than the depth, having slatted or solid sides ventilated or non-ventilated,

and a fabricated or solid bottom which may be loose or fixed in place, or formed by a continuation of the sides. Amendment effective June 1, 1933.

Par. 6. Round stave basket.—A container usually approximately circular at top and bottom and usually of greater breadth than depth, the sides and bottom of which may be formed from a web of continuous or non-continuous staves or of non-continuous staves and a separate solid or built-up bottom piece which may be loose or fixed. Amendment effective June 1, 1933.

Par. 7. Splint basket.—A container, usually approximately rectangular, the sides and bottom of which are formed from a mat, woven or braided, of continuous narrow staves or splints, or of two or more veneer blanks crossed at right angles.

Par. 8. Dimension specifications.—The numerical designations of inside and outside measurements necessary properly to classify a container as to its capacity, shape, and appearance.

Par. 9. Deceptive appearance.—A basket or hamper the gross dimensions of which are such as to give to the untrained eye the appearance of a greater or lesser capacity than that of a standard container, or which is not readily distinguishable from another standard container, is of deceptive appearance.

REGULATION 2—ADMINISTRATION

SECTION 1. The chief of bureau shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in enforcing the provisions of this act and these rules and regulations.

REGULATION 3—SPECIFICATIONS

SECTION 1. *Paragraph 1.* In order to comply with section 4 of the act each manufacturer of hampers, round stave baskets and/or splint baskets shall submit specifications therefor to the chief of bureau for his approval, such specifications to be submitted over the manufacturer's signature on forms provided for that purpose.

Par. 2. Manufacturers shall submit dimension specifications for all containers covered by the act which are being made prior to November 1, 1929, and which they wish to continue to make after that date, and dimension specifications shall also be submitted for any such containers which may be developed subsequently, and the manufacture of containers covered by the act shall not be undertaken on and after November 1, 1929, unless and until the specifications therefor have been approved by the chief of bureau.

Par. 3. The chief of bureau will approve all such dimension specifications if he finds that the containers made in accordance therewith are of the proper cubical capacity and are not deceptive in appearance.

Par. 4. The dimension specifications of any container which have been approved under the provisions of the act shall not be changed nor altered in any way without the prior approval of the chief of bureau.

Par. 5. Manufacturers of containers coming under this act shall secure prior approval of speci-

fications for such containers before ordering or obtaining forms therefor.

SEC. 2. The dimension specifications which are approved will be specifically certified by the chief of bureau, and such certificate will bear an identification number which may be used by the manufacturer to whom it is issued in stamping or otherwise marking the container covered by the certificate. Such marking, if used, shall be in accordance with the following style:

708
U. S.
4 qts.

REGULATION 4—CAPACITY AND APPEARANCE

SECTION 1. *Paragraph 1.* For the purpose of determining the capacity of containers and whether or not they are deceptive in appearance, and conform to the dimension specifications which have been submitted therefor, carefully made samples shall be submitted to the chief of bureau at his request.

Par. 2. Such containers when tested and/or measured will be considered satisfactory when the results of said tests and measurements are such as to indicate that the factory run of such containers may reasonably be expected to contain as many over standard as there are under standard capacity, and conform to the approved specifications.

Par. 3. Sample containers referred to in paragraph 1 of this section may be called for prior to the approval of the dimension specifications which

have been submitted therefor, and additional samples may be called for from time to time in the discretion of the chief of bureau for subsequent test as to capacity and conformity with said specifications.

SEC. 2. For the purpose of determining whether or not a container is deceptive in appearance, as provided in section 4 of the act, the dimension specifications for such a container, when submitted by a manufacturer as required by that section, shall be examined by the chief of bureau or his authorized representative and shall be recommended for approval provided the container made in accordance with such specifications is not of deceptive appearance as defined in section 1 of these regulations, and provided further that said container is of the proper cubical capacity as provided in sections 1 and 2 of this act.

REGULATION 5—TOLERANCES AND VARIATIONS

SECTION 1. *Paragraph 1.* Except as hereinafter provided, for the purpose of ascertaining whether a container is within the tolerances and variations as to capacity allowed by these regulations it shall be tested by the bulk-for-bulk method, as described in U. S. D. A. Miscel. Pub. No. 75, or by the dimensional measurement method, which is accomplished by taking the dimensions of the container and from these computing the capacity. Only the actual capacity of the container when level full shall be considered, and such portion of the contents as may be heaped above the level of the top of the sides shall be disregarded notwithstanding any raised

cover which might permit the extension upward of the contents. Amendment effective January 1, 1936.

Par. 2. The capacity of a container which is constructed with the inside top hoop set down to accommodate the cover shall be determined to the top of such inside top hoop. The total capacity shall first be determined in the usual manner and from such total capacity thus obtained there shall be deducted the number of cubic inches contained in the space included between the upper edge of the inside top hoop and the upper ends of the staves. Such computation shall be made by the formula: Diameter squared X 0.7854 X the average depth. Amendment effective Jan. 1, 1936.

SEC. 2. *Paragraph 1.* As prescribed in this section, the following tolerances and variations in the capacities of containers are found to be reasonable and necessary and are hereby allowed.

Par. 2. The excess or deficiency in capacity of any container, over or under the capacity prescribed for such container in the standard container act of 1928, as specified in Table 1 in the column designated "Standard capacity", may be as much as, but not greater than, the amount stated in cubic inches in the same line in the column designated "Excess" or "Deficiency", as the case may be, but, among any lot of containers which are not all of the standard capacity prescribed for such containers by the standard container act of 1928, the number over shall be as nearly equal as may be practical to the number under such standard capacity, within the tolerances and variations allowed therefor in this section.

TABLE 1.—*Schedule of tolerances under the United States standard container act of 1928*

Standard capacity	Tolerances and variations		Standard capacity	Tolerances and variations	
	Excess	Deficiency		Excess	Deficiency
	Cubic inches	*Cubic inches*		*Cubic inches*	*Cubic inches*
1½ bushels	65	33	½ bushel	30	15
1¼ bushels	58	29	12 quarts	23	12
1 bushel	50	25	8 quarts	16	8
¾ bushel	40	20	4 quarts	10	5

Par. 3. In case of a container having a capacity to which a standard is applicable which is not specified in the column headed "Standard capacity" in Table 1, the excess or the deficiency allowed shall be that permitted for the next smaller standard capacity specified in the table, but this shall not apply to containers for which variations and tolerances shall be permitted and established under the act entitled "An act to fix the standard barrel for fruits, vegetables, and other dry commodities", approved March 4, 1915 (38 U. S. Stats. L., p. 1186), when such variations and tolerances become effective.

SEC. 3. *Par. 1.* In the case of Splint Baskets for fruits and vegetables the following basket and form dimensions and material specifications for each of the several standard sizes, respectively, are hereby standardized for the purpose of the application of tolerances. Amendment effective January 1, 1936.

Square braid and slab overhandle splint baskets, standard basket, form, and material specifications

Standard sizes Cubic inches	4-qt. 268.8	8-qt. 537.6	12-qt. 806.4	16-qt. 1,075.2	24-qt. 1,612.8	32-qt. 2,150.4
BASKET DIMENSIONS	*Inches*	*Inches*	*Inches*	*Inches*	*Inches*	*Inches*
Depth, at corners	4	5	6	7	8 3/16	8 3/16
Top center:						
Width	5 1/2	7 1/4	7 3/4	8	9	10 1/16
Length	13	15 1/16	17 3/4	19 1/2	22 3/4	22 3/4
Top corners:						
Width	5 5/16	7 1/16	8	8	9 1/4	11
Length	12 1/16	15 3/4	16 3/4	18 3/4	21 1/2	22 1/16
Bottom:						
Width	5 3/16	6 7/16	7 3/16	8	9 3/16	11
Length	11 3/16	15 1/16	16 1/4	17 9/16	19 3/16	22
Handle: Length	16 3/4	21	24 1/2	25 1/2	28 3/4	31 1/4
Placement of ends [1]						
FORM DIMENSIONS						
Depth, at ends	4	5	6	7	8 3/16	8 3/16
Top:						
Width	6	7	8	8 3/16	10 3/16	11
Length	12	15 3/16	16 1/2	18 3/16	21 3/16	21 3/16
Circumference	36	45	49	53	58 1/2	65
MATERIAL SPECIFICATIONS						
Inside top bands (when scored):						
Distance between scores:						
Width	6	7 3/16	8 3/16	8 3/16		11
Length	12	15 3/16	16 1/2	18 3/16		22 1/16
SHORT AND LONG SPLINTS (STANDARDS)						
Scored from each end	4	5	6	7	8 3/16	8 3/16
Distance between scores:						
Short	5 7/16	6 15/16	7 13/16	8 11/16	9 3/4	11 1/16
Long	11 7/16	15 3/16	16 5/16	17 5/16	19 7/16	22 1/16
Handle, length	17	21 3/4	24 3/4	25 3/4	28 1/2	31 1/2

[1] Ends of handle shall extend to bottom of basket.

(Amendment effective January 3, 1936.)

PAR. 2. Any Splint Basket, no dimension of which is in error by more than the tolerance given below for the proper standard size, or, any Splint Basket which is constructed of standard material and on a standard form no dimension of which, respectively, is in error by more than the tolerance given below for the proper standard size, will be

deemed to be not deceptive in appearance and within the tolerance allowed: Provided, that not more than one dimension of any splint basket, splint basket form, or splint basket material, respectively, shall be in error in the same direction.

In these regulations an error on a dimension shall be construed as the difference between the actual measured dimension and the standard dimension. An error in excess is to be indicated when the measured dimension is greater than the standard dimension. An error in deficiency is to be indicated when the measured dimension is less than the standard dimension.

Tolerances and variations, standard square brain and slab splint baskets, baskets, forms, and material

		Excess or deficiency
BASKET DIMENSIONS		
Depth	All sizes	1/16 inch.
Combined width and length:		
Top center	4, 8, and 32-qt. sizes	1/2 inch.
Do	12, 16, and 24-qt. sizes	3/4 inch.
Combined width and length:		
Top corners	4, 8, and 32-qt. sizes	1/2 inch.
Do	12, 16, and 24-qt. sizes	3/4 inch.
Bottom:		
Width	All sizes	1/8 inch.
Length	do	1/8 inch.
Handle:		
Length	do	1/2 inch.
Placement of ends	do	None.
FORM DIMENSIONS		
Depth	do	1/16 inch.
Top:		
Width	do	1/8 inch.
Length	do	1/8 inch.
Circumference	do	1 inch.
MATERIAL SPECIFICATIONS		
Inside top bands (when scored): Scored dimensions.	do	1/16 inch.
Short and long splints (standards): Scored dimensions.	do	1/16 inch.
Handle: Length	do	1/2 inch.

(Amendment effective January 1, 1936.)

PAR. 3. Any splint basket for fruits and vegetables one or more dimensions of which are in error by more than the tolerances given above, or which is constructed of material or on a form one or more dimensions of which, respectively, are in error by more than the tolerances given above, shall be deemed to be outside the tolerance allowed by this section, and shall be subject to the tests prescribed in Section 1, and to the tolerances provided for in Section 2, of these Regulations. (Amendment effective January 1, 1936.)

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